

From Behind Closed Doors: Shedding Light on Elder Abuse and Domestic Violence in Late Life

Helen had been thrown down the stairs by her husband before. Their 40-plus years of marriage had been riddled with violence. But something was different this time. As she lay crumpled at the bottom of the steps, she had a flash of insight: “I’m 74 years old. The next time he throws me down the stairs, I’m going to die.” Helen’s revelation that day led her to the Institute on Aging’s Consortium for Elder Abuse Prevention. Helen joined a support group for abused older women and slowly gained the courage she needed to leave her long-time relationship. Helen was able to open the door to safety with a lot of help and support. Whether seen as a survivor of elder abuse or as a survivor of domestic violence in late life, Helen is just one of thousands of elderly and disabled Americans who suffer behind closed doors.

More than a quarter century has passed since elder abuse first became a matter of public concern in this country. Testimony on “parent battering” at a congressional hearing on family violence in 1978 brought the topic to light.¹ And yet recognition of elder abuse as a social and legal problem is years behind child abuse and domestic violence, its cousins in the triad of family violence issues. There is no federal legislation that focuses exclusively on elder abuse. The first proposed federal elder abuse bill, the Prevention, Identification, and Treatment of Elder Abuse Act of 1981, modeled after the Child Abuse Prevention and Treatment Act of 1974, was introduced to Congress 15 times by 1997 but never passed despite strong congressional and state support for it.² The Elder Justice Act was originally introduced in the 108th Congress in 2003 but did not pass.³ Senators Orrin Hatch, R-Utah, and Blanche Lincoln, D-Ark., have plans to reintroduce the act in the next Congress. This legislation would create a collaborative law enforcement and public health approach toward researching, preventing, treating, and prosecuting elder abuse, neglect, and exploitation.⁴

Only 5 percent of those over 60 years of age are living in institutions at any given point in time.⁵ While nursing-home residents may also be victims of abuse and neglect, this article focuses on the 95 percent of seniors who live in the community—in their own homes and apartments or with others. For the purposes of this article, *senior* and other similar terms mean those

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As California’s elderly population increases, so will the incidence of elder abuse, including domestic violence in late life. Ninety percent of all elder abuse is perpetrated by family members, a large part by spouses and partners. Both aging-services and domestic violence professionals often feel unprepared to adequately address the needs of elderly victims of family violence. And, while most elder abuse cases are seen in probate court (with petitions for conservatorship), all court departments may encounter elderly victims of family violence. This article provides background information, definitions of types of elder abuse, the incidence and prevalence of elder abuse,

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theories as to why elder abuse occurs, barriers to services specific to older victims, and challenges for the courts in confronting this growing problem. ■

65 years of age and older. An often-overlooked group also covered under California's "elder" abuse law⁶ is adults 18 to 64 who are disabled either physically or mentally.⁷ The appellation *dependent adult* describes this large cohort.⁸ Importantly, any one of us may be "dependent adults" at any time that illness or an accident renders us "dependent." The condition need not be permanent to trigger the protections of the law.⁹ In this article the term *elder abuse* includes dependent adults and victims of domestic violence in late life.

WHAT IS ELDER ABUSE?

According to the National Center on Elder Abuse (NCEA), "[e]lder abuse is a term referring to any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to a vulnerable adult."¹⁰ The specificity of laws protecting elders varies from state to state. In California, elder abuse or abuse of a dependent adult includes (1) physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or (2) the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.¹¹ "Undue influence," akin to brainwashing, is a concept that is gaining recognition as a feature of emotional abuse leading to mental suffering.¹² In addition, sometimes elders neglect their own care, which can lead to illness or injury. This category of elder abuse, called "self-neglect," can include behaviors such as hoarding objects, failing to take medication, poor hygiene, and dehydration.¹³ Self-neglect has been correlated with the presence of depression, dementia, and alcohol abuse.¹⁴

In California, the law specifically defines physical abuse,¹⁵ emotional abuse,¹⁶ sexual abuse,¹⁷ isolation,¹⁸ false imprisonment,¹⁹ financial abuse,²⁰ abandonment,²¹ neglect,²² and self-neglect.²³ All forms of abuse, with the exception of emotional abuse,²⁴ are mandated to be reported by those whom the law identifies as mandatory reporters (e.g., social workers, medical professionals, and ministers, to name a few).²⁵ The reports are made to the county's adult protective services (APS) agency, the government office charged with receiving and investigating reports of suspected elder and dependent adult abuse, neglect, and self-neglect.²⁶ When a report is made, the identity of the reporter is kept confidential.²⁷

PREVALENCE AND INCIDENCE OF ELDER ABUSE

It is difficult to say how many older Americans are abused, neglected, or exploited, in large part because the problem remains greatly hidden. Findings from the National Elder Abuse Incidence Study suggest that more than 500,000 Americans aged 60 and over were victims of domestic abuse in



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1996.²⁸ This study also found that only 16 percent of the abusive situations were referred for help, while 84 percent remained hidden.²⁹ Prevalence research suggests that from 700,000 to 1,100,000 older adults are victims of elder maltreatment each year,³⁰ a number that doubles when self-neglect is included.³¹ Similarly, the House of Representatives' Select Committee on Aging found that up to 5 percent—1.5 million persons—of the nation's elderly may be subject to moderate to severe abuse.³² Reports of elder abuse and neglect to local adult protective services units are on the rise; the number of APS reports increased from 117,000 in 1986 to 293,000 in 1996, a 150 percent increase.³³ The California Attorney General's Office estimates that nearly 200,000 seniors and dependent adults are abused, neglected, or self-neglecting each year in the state.³⁴

The United States is experiencing an unprecedented growth in the numbers of people over 65 years of age. Of that group, the fastest growing segment is over 85. The "baby boomers," those born between 1946 and 1964, will begin turning 65 in 2011. In 2030, they will begin turning 85.³⁵

California is the fastest growing state in total population and has the most elders of any state. Between 1990 and 2020, the number of elders in California will grow more than twice as fast as in the general population.³⁶

In 1998, the California Legislature, recognizing the state's burgeoning elderly population and the need to strengthen protections for vulnerable adults, passed Senate Bill 2199, which significantly improved the state's response to elder abuse by augmenting staff at county APS programs, instituting response-time requirements (cases must be responded to in either 24 hours—for emergencies—or within 10 days), and adding new categories of mandated reporters.³⁷ Now California is one of the leaders in elder abuse prevention.

WOMEN OVER 80 ARE MOST VULNERABLE

While there is no "typical" victim of abuse, women are the victims in two-thirds of all cases reported to

authorities,³⁸ and people over 80 years of age have a two to three times greater risk of being a victim than those from 60 to 79.³⁹

ELDER ABUSE IS A FAMILY VIOLENCE ISSUE

Ninety percent of all elder abuse is perpetrated by family members.⁴⁰ Adult offspring and spouses account for almost 70 percent of this number.⁴¹ Perhaps owing to methodological differences, research is conflicting regarding whether adult children⁴² or spouses⁴³ are more likely to abuse. Similarly, research is conflicting regarding whether women⁴⁴ or men⁴⁵ are more likely to abuse; women may be more likely to engage in neglect, while men may be more likely to verbally and physically abuse.⁴⁶ The bottom line is that elder abuse is a family violence issue.

WHAT CAUSES ELDER ABUSE?

"Caregiver stress" as a primary cause of elder abuse enjoyed popularity in the early years of research on elder abuse.⁴⁷ The assumption of the caregiver-stress paradigm was that the more help the older person needed the more likely abuse was to occur.⁴⁸ While certain behaviors on the part of an elder-care recipient (e.g., refusal to bathe, aggressive behavior, unwillingness to give money that an abuser sees as "rightfully his") may trigger abuse,⁴⁹ in general caregiver stress as a cause of elder abuse has been debunked.⁵⁰ Instead, research indicates that perpetrator characteristics play a more important role than victim characteristics in explaining occurrence of abuse.⁵¹

Research has uncovered several key perpetrator characteristics: (1) drug and/or alcohol abuse, (2) impairments such as mental illness and developmental disabilities, (3) financial dependency on the elder, and (4) a bad past relationship with the elder.⁵² When applied to family caregiving situations, these findings emphasize that, within the stressful context of caregiving, most people cope without resorting to violent or exploitive behavior.⁵³ Family members who experience one or more of these risk factors are much more likely to develop an abusive relationship with an elder relative.⁵⁴ Indeed, elder abuse resembles domestic

violence with its cycle of violence and dynamic of power and control.⁵⁵ Most cases of elder abuse involve the types of victim-abuser dynamics seen in other forms of domestic violence relationships.⁵⁶

ELDER ABUSE AS DOMESTIC VIOLENCE

As elder abuse became identified as a social and legal problem, the initial response to it closely paralleled society's response to child abuse.⁵⁷ Child abuse law with its mandatory reporting became the model on which elder abuse legislation was based.⁵⁸ The weaknesses of this model, including its tendency to treat adults as children, led many to turn to the domestic violence paradigm as a better fit.⁵⁹ Recognizing that power and control dynamics existed in some elder abuse situations (even when the abuser was not a spouse or partner) brought a fresh understanding to the dynamics of elder abuse.⁶⁰ And yet, while elder abuse incorporates some of the features of domestic violence occurring with younger people, it is especially characterized by increased physical vulnerability due to age, changing mental abilities due to the increased incidence of dementia, undue influence, and financial abuse or exploitation.⁶¹

Experts have identified three kinds of domestic violence in late life:

1. a long-time, violence-free relationship that becomes violent with the occurrence of specific behaviors by an elder who has dementia (which may cause personality changes)
2. a new relationship (following divorce or widowhood) that turns violent (usually following a whirlwind courtship)
3. a long-term violent relationship that endures into old age⁶²

Random-sample studies of seniors living in the community found more spouse/partner abuse than abuse by adult children.⁶³ Another study of 5,168 couples found that 5.8 percent of couples over 60

experienced physical violence in their relationship within the past year.⁶⁴

Professionals may struggle with different issues when domestic violence in late life is uncovered. For example, law enforcement professionals may find it hard to arrest the perpetrator when he or she is 70, 75, or 80 years old. Judges may see a wife of 35 years and conclude that her reluctance to testify against her husband reflects her deep commitment to him, not her fear of losing her beloved home, her concern about her often-mistreated cat, or simply her terror of starting over in her "golden years." Lack of knowledge regarding elder abuse may blind a social worker to the truth when the victim's much younger wife uses "caregiver stress" as her reason for slapping her husband.

BARRIERS FOR OLDER CLIENTS

Older clients struggle with barriers that are both similar to those faced by younger victims and also different as a result of age and disability. For example, elder people

- are not typically used to seeking help;
- do not identify as domestic violence victims (or as elder abuse victims);
- are sensitized to putting other people's needs ahead of their own;
- may have multiple health issues, including difficulty with mobility;
- may adhere to the strict rules of their religion that bar divorce;
- may need in-home supportive services that cannot be delivered in a domestic violence shelter; and
- may be male and not have access to many services (one-third of all elder abuse victims are male).⁶⁵

ISSUES FOR THE COURTS

The victim of elder abuse or domestic violence in late life may come to the court's attention in several ways. In one recent example, staff at a California

court called adult protective services about a prospective juror because the older man's ill health and poor hygiene concerned the judge, who feared that the man might be neglected or be self-neglecting. In civil courts handling landlord-tenant matters, elders may seek to evict tenants who are terrorizing them. Adult adoptions require special sensitivity and investigation to ensure that the motives of both parties are without malevolence. A large city court investigating the application for adoption of a 62-year-old man by his 92-year-old female neighbor discovered that the man was intent on inheriting the woman's house upon her death even though she had two sons and a daughter. Family courts see petitions for both domestic violence restraining orders and for elder abuse restraining orders. Probate courts see the most elder abuse in the context of conservatorships, which are commonly sought to remove an abuser from power over a vulnerable adult or to rectify abusive acts such as appropriation of bank accounts or property.⁶⁶ And, finally, more and more cases are coming into criminal courts as police and district attorneys are learning how to prosecute the cases through trial even when the victim may not be able to testify.⁶⁷

While the occasional elder abuse case is replete with evidence and cooperating victims and witnesses, most cases of elder abuse and domestic violence in late life are extremely complex. These cases often pit reluctant or fearful parents against scheming adult offspring or spouses, a senior's right to folly against society's duty to protect the vulnerable, and undue influence against a senior's claim that the ancestral home was indeed given willingly to the new maid. And, although elder abuse is a crime,⁶⁸ it is still seen by many as a "family matter."

Whether abused by a spouse, a partner, an adult offspring, or a trusted friend, the victim of elder abuse comes before the legal system with embarrassment, deep shame and self-blame, significant reluctance to injure the alleged abuser, probable trauma, and possible confusion from deficits in mental functioning (as a result of stroke, Alzheimer's disease, Parkinson's disease, or another debilitating condition).

CALIFORNIA COURT PROJECTS FOCUSED ON ELDER ABUSE

In California, courts are taking steps to address the growing elder population and, in particular, elder abuse. In 2002, the Administrative Office of the Courts (AOC) funded two Elder Access programs, one each in the Superior Courts of Alameda and San Francisco Counties. Alameda County used its grant monies to create an Elder Abuse Protection Court Project with a court calendar dedicated to elder abuse cases. The separate calendar offers elders a shorter wait time in the courtroom and more privacy than is usually the case for public hearings dealing with very personal matters. The calendar is heard weekly at each of the four courthouses and starts late in the morning to give seniors more time to travel to court. The cornerstone of the project's success is collaboration with community agencies such as APS, the District Attorney's Victim Witness Program, legal aid, and pro bono attorneys. An elder abuse case manager assists the elders by helping them fill out the forms and by linking them with appropriate community agencies. More than 330 abused elders have been assisted since the project's inception. Most were low income and self-represented; 40 percent were male. Most of the alleged abusers were family members.

In the Superior Court of San Francisco County, the Elder Access project focused on conservatorships because the bulk of elders appear in probate court. The project surveyed the 150 agencies comprising the San Francisco Consortium for Elder Abuse Prevention to learn whether professionals in non-profit agencies were familiar with the probate court and whether the court was accessible to elders. Over 90 percent of those surveyed were familiar with the probate court. The most commonly cited barrier to access was the inability to get a particular case into the court system because no individual or agency would file a petition for conservatorship. Project staff also reviewed the 168 conservatorships established in 2000 to learn more about the nature of these proceedings. Of the total conservatees, 87 percent were

older than 65. Perhaps not surprisingly, 40 percent of the conservatees were older than 85. Most (58 percent) were women. The most common impairment was cognitive (65.9 percent), followed by difficulties with basic activities of daily living (49.2 percent). Proposed conservators were family members in 35 percent of the cases. Other conservators were the public guardian, private nonprofit agencies, private professional conservators, and friends. The San Francisco project also convened a work group composed of professionals who serve vulnerable elders that explored obstacles to securing conservatorships. In addition, the project conducted individual and group interviews with representatives of the agencies that made or accepted referrals for conservatorships. It held public and professional educational sessions with particular outreach to minority groups. Staff wrote and published in the minority press a series of articles about the probate court. A direct outgrowth of the San Francisco project was the establishment of a conservatorship clinic where self-represented people could receive assistance in filing for conservatorship.

The Judicial Council of California has shown increasing concern about the impact of the aging population on the courts and about elder abuse in general, and convened a plenary session and roundtable discussions on the subject in conjunction with its statewide bench conference in September 2005. The AOC recently launched a research project to study conservatorships statewide, to collect basic data on conservatorships, and to lay the foundation for future work to determine how courts identify abuse in conservatorships and what practices are most effective in dealing with the abuse.

NATIONAL ATTENTION ON ELDERS IN THE COURTS

There is also movement on the national level to address elder abuse. The National Center for State Courts is embarking on a project to determine how courts identify and deal with elder abuse. The American Bar Association's Commission on Law and Aging (COLA) has also been active on the issue of

elder abuse and the courts. In 1995, the commission received a grant from the State Justice Institute that enabled a groundbreaking project and produced *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*. The recommendations were intended to aid the courts in

- providing appropriate judicial solutions that respect the values and wishes of elder abuse victims while protecting victims' welfare;
- facilitating access to the courts for appropriate cases;
- enhancing coordination among the court system, state and local agencies, and the elder-advocate network.⁶⁹

Following this project, the State Justice Institute funded another project, this one enabling COLA and the National Association of Women Judges to develop three model interdisciplinary curricula on elder abuse for judges and for key court staff.⁷⁰ Currently, COLA is at work on a handbook for judges that will assist them in determining the mental capacity of elders appearing in their courts.

While it is certain that the incidences of elder abuse and neglect will rise given the aging of the "baby boomers," California courts are responding, and so are national organizations that can be helpful to California courts. The courts will need to work with a variety of community agencies in responding to the problem of elder abuse. No one institution and no one judge can do it alone.

NOTES

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8. *Id.*
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12. Mary Joy Quinn, *Undoing Undue Influence*, 24 GENERATIONS, J. AM. SOC'Y ON AGING 65 (Summer 2000).
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16. CAL. WELF. & INST. CODE § 15610.53 (referred to as “mental suffering”).
17. CAL. WELF. & INST. CODE § 15610.63(e).
18. CAL. WELF. & INST. CODE § 15610.43.
19. CAL. PENAL CODE § 236 (West 2005).
20. CAL. WELF. & INST. CODE § 15610.30 (West 2005).
21. CAL. WELF. & INST. CODE § 15610.05.
22. CAL. WELF. & INST. CODE § 15610.57.
23. CAL. WELF. & INST. CODE § 15610.57(a)(2), (b)(5).
24. But emotional abuse may be reported whenever a mandated reporter has knowledge or “reasonably suspects” that an elder or dependent adult’s emotional well-being is endangered in any way. CAL. WELF. & INST. CODE § 15630(c)(1).
25. *Id.*
26. CAL. WELF. & INST. CODE § 15630(b)(1)(C).
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39. *Id.* at 4-13.
40. *Id.* at 4-28.
41. *Id.*

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